



Kidz Educational Services SLP, OT, PT, LMSW, Psychology, Audiology, PLLC

ANNUAL SERVICES AGREEMENT 2023-2024
MALVERNE UFSD

This Agreement is effective as of July 1, 2023, by and between **MALVERNE UFSD** (hereinafter the "DISTRICT"), having its principal place of business for the purpose of this Agreement at **75 Ocean Avenue, Malverne, NY 11565** and **KIDZ EDUCATIONAL SERVICES SLP, OT, PT, LMSW, PSYCHOLOGY, AUDIOLOGY, PLLC** (hereinafter "CONSULTANT"), having its principal place of business for the purpose of this Agreement at 1400 Old Country Road, Ste. C103N Westbury, NY 11590.

A. TERM

The term of this Agreement shall be from July 1, 2023 through June 30, 2024 (hereinafter, the "Year"), unless otherwise terminated in accordance with this Agreement ("Term"). It is understood that the DISTRICT is under no obligation to renew this Agreement upon its expiration.

B. SERVICES:

1. During the Term, the services to be provided by the CONSULTANT to the DISTRICT shall include, but not be limited to the following:

See Schedule 1, "Services".

2. The CONSULTANT shall provide the Services set forth in this Agreement to those student(s) referred by the DISTRICT as set forth herein. In the event that the District desires to obtain additional services from CONSULTANT not outlined within the scope of Services at any time during the Year, the parties shall identify the additional services and agree upon the cost for the provision of such services.
3. All Services provided by CONSULTANT to students under this Agreement shall be in accordance with each student's Individualized Education Plan (IEP), as it may be modified from time to time. Prompt email notice shall be given by the DISTRICT to the CONSULTANT upon any modification of a student's IEP to SchoolAge@familyofkidz.com. If a Student's IEP mandates services to be provided in a group and an appropriate group is not available, CONSULTANT will immediately notify the DISTRICT via an "Inability to Group" form. CONSULTANT will provide individual Services and said Services will be billed to the DISTRICT at the individual rate. In the event that an appropriate group is available at a later date, CONSULTANT will immediately notify the DISTRICT via an "Ability to Group" form, and the Student shall be placed in that available group and said Services will be billed to the DISTRICT at the group rate. In the event that only one student is present for a "group" session, session will be billed at the individual rate.
4. CONSULTANT shall notify the DISTRICT promptly of any problems, situations or incidents that occur during the provision of Services.
5. Evaluations shall be conducted using standardized tests, at the cost set forth herein. Evaluation reports shall be submitted to the DISTRICT in a timely manner in accordance with mandated timelines.
6. At the district's request, CONSULTANT's Evaluator or representative will present evaluation report at CSE Meeting at the rates set forth in Schedule 2.

7. CONSULTANT shall perform all Services under this Agreement in accordance with all applicable Federal, State and local laws, rules, and regulations, as well as the established policy guidance from the New York State Education Department.
8. Services provided pursuant to this Agreement shall be provided without regard to race, creed, color, sex, sexual orientation, national origin, religion, age, disability, or sponsorship.
9. CONSULTANT shall comply with all applicable provisions of the Safe Schools Against Violence in Education (SAVE) Act, including, but not limited to background checks and fingerprinting of all staff directly providing Services to students. All persons providing Services to the DISTRICT pursuant to this Agreement must receive clearance for employment by the New York State Education Department prior to the provision of such Services.

C. SERVICE PROVIDER QUALIFICATIONS:

1. CONSULTANT shall comply with all applicable Federal, State and local laws with respect to any Service Provider who is providing Services through CONSULTANT under the terms of this Agreement.
2. CONSULTANT represents that all Services under this Agreement shall be provided by qualified individuals of good character, and in good professional standing, each a "Service Provider" and collectively, "Service Providers". CONSULTANT represents that no Service Providers rendering Services under this Agreement are currently charged, nor in the past have been charged with any relevant criminal or professional misconduct or incompetence. Any individual found to be ineligible to render Services hereunder at any time will be removed from rendering Services immediately and be replaced with an eligible Service Provider.
3. Upon execution of this Agreement, CONSULTANT shall provide copies of required licenses/certifications of all professionals providing Services to student(s) under this Agreement. In the event that the required license/certification of any agent or employee of CONSULTANT providing Services under this Agreement is revoked, terminated, suspended, or otherwise impaired, CONSULTANT shall immediately notify the DISTRICT in accordance with the requirements for all notices pursuant to this Agreement set forth below. All Service Providers shall wear a photo ID badge.
4. CONSULTANT represents and warrants that it, nor its employees or contractors, are not excluded from participation, and is not otherwise ineligible to participate, in a "federal health care program" as defined in 42 U.S.C. § 1320a-7b(f) or in any other government payment program.
5. In the event CONSULTANT is excluded from participation, or becomes otherwise ineligible to participate in any such program during the Term, CONSULTANT will notify the DISTRICT in writing within three (3) days after such event.
6. CONSULTANT further represents and warrants it will, at a minimum, check monthly all of its employees and subcontractors against:
 - i. The General Services Administration's Federal Excluded Party List System (or any successor system),
 - ii. The United States Department of Health and Human Services Office of the Inspector General's Lists of Excluded Individuals and Entities or any successor list,
 - iii. The New York State Department of Health's Office of the Medicaid Inspector General's List of Restricted, Terminated or Excluded Individuals or Entities.

In the event an excluded party is discovered, CONSULTANT will notify the DISTRICT in writing within three (3) days after such event.

7. All Service Providers will complete an annual review report for each Student serviced and comply with any testing requirements upon receipt of written notice to SchoolAge@familyofkidz.com and the consent to evaluate. Service Providers are required to submit all annual review reports by March 15th. Annual reviews scheduled prior to that date require three (3) weeks advance notice. The DISTRICT shall provide timely notice of annual review dates. Service Providers will attend CSE meetings and/or other Student support team meetings, where appropriate at the rates set forth in Schedule 2. CONSULTANT shall provide the DISTRICT with a copy of Annual Review Reports, testing and/or observation reports, which are prepared in connection with any of the Student's Services in advance of scheduled meetings.
8. Service Providers will complete progress reports in IEP Direct, as per District policy, in addition to the Annual Review Report. ABA and Parent Training providers shall submit a report only.
9. DISTRICT reserves the right to reject any of the CONSULTANT'S staff, which the DISTRICT, at its sole discretion, may deem unqualified.
10. CONSULTANT shall observe and comply with all applicable DISTRICT Policies and Regulations while on the grounds of the DISTRICT or providing Services pursuant to this Agreement.
11. CONSULTANT shall provide all Services pursuant to this Agreement in a competent, professional and timely manner.
12. CONSULTANT will work cooperatively with the Committee on Special Education (CSE), the DISTRICT'S administrative staff and medical staff. The CONSULTANT shall make relevant personnel available to participate in meetings of the DISTRICT'S CSE when appropriate, upon reasonable prior notice to the CONSULTANT of such meetings.
13. CONSULTANT shall maintain records, logs and/or reports in accordance with all applicable laws, regulations, requirements of the New York State Education Department and DISTRICT policies and procedures in force during the term of this Agreement. The DISTRICT shall have the right to examine any or all records or accounts maintained and/or created by the CONSULTANT in connection with this Agreement, and upon request shall be entitled to copies of same.
14. Both parties to this Agreement understand that they may receive and/or come into contact with protected health information as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and information protected by the Family Educational Rights and Privacy Act ("FERPA"). The Parties hereby acknowledge their respective responsibilities pursuant to HIPAA and, if necessary, shall execute a Business Associate Agreement in connection with such responsibilities.
15. Both parties, their employees, and/or agents agree that all information obtained in connection with the Services performed pursuant to this Agreement is deemed confidential information. Both parties, their employees, and/or agents shall not use, publish, discuss, disclose or communicate the contents of such information, directly or indirectly with third parties, except as provided for in this Agreement. Both parties further agree that any information received by either party's employees and/or agents in connection with this Agreement which concerns the personal, financial, or other affairs of the parties, their employees, agents, and/or students will be treated as confidential and will not be revealed to any other persons, firms, organizations, or third parties. In addition, both parties agree that information concerning any student covered by the terms of this Agreement shall not be released except as provided for by applicable law, rule, or regulation, including but not limited to the Family Educational Rights and Privacy Act (FERPA).
16. In the event that the parent or person in parental relation to a student(s) receiving Services pursuant to this Agreement initiates litigation in connection with such Services, CONSULTANT shall promptly give written notice of same to the DISTRICT.

17. The DISTRICT retains final professional and administrative responsibility for any Services rendered to its students.

D. Insurance:

1. CONSULTANT, at its sole expense, shall procure and maintain such policies of commercial general liability, malpractice and other insurance as shall be necessary to insure the CONSULTANT and the DISTRICT, as additional insured, against any claim for liability, personal injury, or death occasioned directly or indirectly by CONSULTANT in connection with the performance of CONSULTANT'S responsibilities under this Agreement; each such policy shall provide a minimum coverage of One Million Dollars (\$1,000,000.00) per occurrence subject to an annual aggregate of Three Million Dollars (\$3,000,000.00).
2. Upon the execution of this Agreement, CONSULTANT will supply the DISTRICT with a Certificate of Insurance.

E. FEES:

1. The DISTRICT shall pay CONSULTANT in accordance with the following fee schedule, following the presentation of detailed invoices by CONSULTANT to the DISTRICT:

See Schedule 2, "2023-24 Rate Sheet"

2. All Services are calculated on a Fee For Service (per session) basis, unless specified differently on the rate sheet CONSULTANT shall submit invoices for payment on a monthly basis. All invoices shall include the Services provided, the total hours, the dates that the invoice covers, and the total amount due for the period specified. The DISTRICT agrees to pay CONSULTANT within thirty (30) days of the DISTRICT's receipt of such invoice. DISTRICT shall give CONSULTANT notice of any invoice disputes within twenty (20) days of its receipt of the invoice.
3. In the event that a scheduled session is cancelled by the CONSULTANT, the DISTRICT shall not be billed for that session. In the event that a home Service Provider is not notified of a cancellation at least one hour prior to the scheduled service, the DISTRICT will be billed for such absence for the length of session, at the rate set forth in Schedule 2 (but not to exceed one hour).
4. Should a student be unavailable to attend his/her individual Services for any reason, the DISTRICT will be responsible for payment of the fees for the Service Provider, as if said Student was present. In such cases, the Service Provider shall use the cancelled session's time to do required paperwork or other student-related work for the DISTRICT.

See Schedule 3, "Alternate Location Process/Procedures"

5. The DISTRICT will be billed a one-time session fee at the inception of a student's services for the consultation with the classroom teacher. The amount charged will be equivalent to a 30 minute charge for that student's mandated service.
6. In the event that only one student is present for a "group" session, session will be billed at the individual rate.
7. Make-ups for missed sessions shall be done within a reasonable period of time, if the Service Provider and student schedules permit. If an absence has already been billed to the DISTRICT, the DISTRICT will not be billed for the make-up session. Missed sessions due to DISTRICT closings can be rescheduled in accordance with the Student's IEP and the Service Provider's schedule.
8. In order to ensure that scheduled services remain on the Service Provider's schedule, the DISTRICT will incur a No Prescription charge in the event the DISTRICT fails to obtain an appropriate prescription for IEP mandated services. DISTRICT shall be charged no more than two (2) sessions per month until the prescription has been received.

9. Neither CONSULTANT nor any of its personnel shall share or accept any fee or gratuity for Services provided pursuant to this Agreement except as expressly set forth in this Agreement.

F. INDEPENDENT CONTRACTOR STATUS:

CONSULTANT is hereby engaged as an independent Contractor, and therefore be solely responsible for the payment of federal and state income taxes applicable to this Agreement. For the avoidance of doubt, it is also expressly understood that the DISTRICT is not an employer to CONSULTANT or its Service Provider(s) and, consequently, CONSULTANT and its Service Provider(s) assigned to DISTRICT shall not be eligible for any additional benefits from DISTRICT, including, but not limited to, Social Security, New York State Workers' Compensation insurance, and unemployment insurance.

G. MISCELLANEOUS

1. Termination:

- i. Either the CONSULTANT or the DISTRICT may terminate this Agreement upon sixty (60) days prior written notice to the other party. Such notice shall be given in accordance with the requirements for all notices pursuant to this Agreement set forth below.
- ii. The parties agree that CONSULTANT'S and/or DISTRICT'S failure to comply with any terms or conditions of this Agreement will provide a basis for the CONSULTANT and/or DISTRICT to immediately terminate this Agreement without any further liability to CONSULTANT and/or DISTRICT.
- iii. In the event the CONSULTANT or the DISTRICT terminates this Agreement with or without cause, such termination of the Agreement shall not discharge the parties' existing obligations to each other as of the effective date of termination.

2. Indemnification:

The parties agrees to indemnify and hold harmless the other party, its officers, directors, agents, employees, contractors, successors or assigns from or against all losses, claims, charges, obligations, liabilities, commitments, actions, proceedings, demands, judgments, assessments, penalties, costs, and expenses (including, without limitation, court costs, reasonable attorneys' fees and other reasonable professional fees and costs) and damages of any kind whatsoever arising out of, in connection with or incident to: (i) any legal noncompliance, (ii) any improper tax filings, including but not limited to improperly claimed deductions, or (iii) any acts or omissions, which results, directly or indirectly, in any of the foregoing. The Section G.2 shall survive termination of this Agreement for the entirety of the statute of limitations of any claim:

3. Restrictive Covenants:

- i. Confidentiality. The parties acknowledge that the Fees, rate sheets, files, reports and documents pertaining to the Services hereunder, and other such materials or records related thereto of a proprietary nature (collectively, the "Confidential Information") are valuable, special and unique assets of each party and are deemed to be trade secrets. Each party agrees that it will not, after the date hereof and for so long as any such Confidential Information may remain confidential, secret, or otherwise wholly or partially protectable: (i) use the Confidential Information, except in connection with the terms of this Agreement, or (ii) divulge any such Confidential Information to any third party (other than its authorized agent or representative bound to confidentiality by agreement) for any reason or purpose whatsoever, unless the other party gives its prior written consent to such use or divulgence. The parties recognize and acknowledge that the terms of this Agreement as well as the Confidential Information and trade secrets as they may exist from time to time, are confidential, valuable, special and unique assets of the other party's business. DISTRICT also recognizes and acknowledges that the systems, protocols,

policies, procedures, manuals, reports, data bases, documents, instruments and other materials used by the CONSULTANT are proprietary to CONSULTANT, and are valuable, special and unique assets of CONSULTANT's business. Confidential Information shall not be deemed to include information which is generally known or in the public domain, or that was acquired by you from an unrestricted third party or as a natural result of our own training and experience.

- ii. Non-Solicitation. The parties agree that during the term of this Agreement and for eighteen (18) months thereafter, neither party shall: (i) directly or indirectly, hire or contract with any employee, independent contractor or known relationship without prior written consent of an authorized officer of the other party; or (ii) take any action whatsoever which is likely to disturb or interfere, or in fact does disturb or interfere, with the existing contractual or other relationships that the other party has with, or endeavor to entice away from the other party, directly or indirectly, any employee, contractor or known relationship.
- iii. Non-Disparagement. Each party agrees that it will not, at any time during the Term of this Agreement or at any time thereafter, directly or indirectly, in public or private, whether in oral, written, electronic or other format, disparage, deprecate, impugn or otherwise make any statements or remarks that would tend to or be construed to defame or slander the personal or professional reputations, professional qualifications or services rendered by the other party, its officers, independent contractors, employees and/or agents and/or successors, nor shall either party in any manner assist or encourage any third party in doing so.
- iv. Remedies. Each party agrees that the provisions of this Section G.3 are necessary and reasonable in order to protect the other party in the conduct of its business, particularly in light of the difficulty in ascertaining damages in the event of a breach. In the event of a breach or threatened breach by you of the provisions of this Section G.3, the non-breaching party shall be entitled to an injunction (without the necessity of securing a bond). The parties agree that in the event of a breach, the non-breaching party will suffer irreparable harm and damages will be difficult to calculate. Nothing contained herein shall be construed as prohibiting either party from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of damages from the other party. The prevailing party in any litigation shall be entitled to reimbursement of reasonable attorney's fees. The existence of any claims or causes of action by the breaching party against the non-breaching party, whether predicated upon this Agreement or otherwise, shall not constitute a defense to the enforcement by the PLLC of this Section G.3.
- v. The terms of this Section G.3 shall survive the expiration or earlier termination of this Agreement.

- 4. Notices: All notices which are required or permitted under this Agreement, and not specified as required by email, shall be in writing, and shall be deemed to have been given three (3) days from the date of the notice, if sent by registered or certified mail, to the address first set forth above.
- 5. Assignment: It is expressly understood that this Agreement shall not be assigned or transferred without prior written consent of the other party.
- 6. No Waiver: The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce every provision of this Agreement.
- 7. Severability: Should any provision of this Agreement, for any reason, be declared invalid and/or unenforceable, such decision shall not affect the validity of the remaining provisions of this Agreement. Such remaining provisions shall remain in full force and effect as if this Agreement had been executed with the invalid provision(s) eliminated.

8. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to principles of conflict or choice of law with the Courts of Nassau County having sole and exclusive jurisdiction to hear and/or decide any disputes that may directly or indirectly under, out of, or in relation to this Agreement, or any document referenced herein. If any provisions of this Agreement shall be unenforceable or invalid, such non-enforceability or invalidity shall not affect the remaining provisions of this Agreement. Any dispute under this Agreement, may at either Party's option, be determined by binding arbitration by a single arbitration administered by binding arbitration by Arbitration Services, Inc. or its successors or assigns, by its commercial rules at www.ArbitrationServicesInc.com. The arbitration shall be bound by the terms of this Agreement and arbitrations may be conducted via telephone, video conference, submission of papers or in person hearing. Service of any legal process or papers may be by First Class Mail, Postage Prepaid, delivered by the US Postal Service to the addresses first set forth above. The prevailing party in any litigation involving this Agreement shall be entitled to all expenses incurred, including but not limited to, reasonable attorney's fees.
9. **Entire Agreement:** This Agreement, is the complete and exclusive statement of the Agreement between the parties, and supersedes all prior or contemporaneous, oral or written: agreements, proposals, understandings, representations, conditions or covenants between the parties relating to the subject matter of the Agreement.
10. **Amendment:** This Agreement may not be changed orally, but only by an Agreement, in writing, signed by authorized representatives of both parties.
11. **Execution:** This Agreement, and any amendments to this Agreement, will not be in effect until agreed to in writing and signed by authorized representatives of both parties.
12. **Counterparts:** This Agreement may be executed in counterparts and each such counterpart, when taken together, shall constitute a single and binding agreement. Facsimile or electronic signature shall have the same effect as an original signature.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CONSULTANT
KIDZ EDUCATIONAL SERVICES
SLP, OT, PT, LMSW, PSYCHOLOGY, AUDIOLOGY, PLLC

DISTRICT
MALVERNE UFSD

By: 
Leonard F. Caltabiano, Psy.D
Chief Executive Officer
Tax ID: 84-3700766

By: _____
Name: _____
Title: _____